

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH SIMMONS,

Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,

Defendants.

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**Civil Action
No. 22-1644**

ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of the Motion for Leave to File a Reply Brief filed by Defendants City of Philadelphia and Commissioner Blanche Carney, and any response thereto, it is hereby ORDERED that the motion is GRANTED. The Clerk of Court is directed to file the Reply Brief attached to that Motion as Exhibit A as of the date of the Motion.

BY THE COURT:

John M. Gallagher, J.

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MOTION FOR LEAVE TO FILE A REPLY BRIEF

Defendant City of Philadelphia, by and through undersigned counsel and in conformance with this Court's Policies and Procedures, hereby moves for leave to file the attached reply brief in support of their motion to dismiss. In support of this motion, it is averred:

1. Defendants City of Philadelphia and Commissioner Blanche Carney moved to dismiss Plaintiff's Third Amended Complaint on April 4, 2023. ECF No. 43.
2. In that Motion, Defendants argued that Plaintiff's Third Amended Complaint failed to state a claim upon which relief could be granted *Id.*
3. Plaintiff has filed a response in opposition, in which he argues he has adequately plead the claims raised. Resp. in Opp., ECF No. 45.
4. Plaintiff's arguments are insufficient to demonstrate adequate pleading under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
5. Plaintiff also raises a new theory of liability that is not plead in his Third Amended Complaint against Commissioner Carney.

6. Since the filing of Defendants' motion and Plaintiff's response, a new opinion has been generated by a district court dealing with the same issues on point. *Diaz v. City of Phila*, No. 22-cv-3286, --- F. Supp. 3d ---, 2023 WL 3011340, at *3–8 (E.D. Pa. Apr. 20, 2023)
7. Defendant seeks leave to file a brief reply in order to expand upon the deficiencies in Plaintiff's Third Amended Complaint and to update the Court on the *Diaz* case, in which the Honorable Eduardo C. Robreno dismissed similar claims premised upon a theory of understaffing.

WHEREFORE, Defendant respectfully requests that the Court GRANT its motion and direct that the Reply Brief, attached hereto as Exhibit A, be deemed filed.

Date: April 28, 2023

Respectfully submitted,

/s/ Kathryn Faris
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CERTIFICATE OF SERVICE

I hereby certify that on the date below Defendants' Motion for Leave, attached exhibit, and this Certificate of Service were filed via the Court's electronic filing system and are available for downloading.

Date: April 28, 2023

Respectfully submitted,

/s/ Kathryn Faris

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